

THE
NECESSITY
OF
PARLIAMENTS:

WITH

Seasonable Directions 2

For the more Regular

ELECTION
OF

Parliament-Men.

To which is added

The BILL for Regulating ELE-
CTIONS of MEMBERS to
serve in PARLIAMENT.

As it was Read and Committed by the HOUSE
of COMMONS, in the Year 1679.

Recommended to all Thinking, and Wise Men.

By a True Protestant, and *English* Man.

LONDON, Printed, and sold by *Rich. Janeway*. 1689.

THE
N E C E S S I T Y
O F
P A R L I A M E N T S
W I T H

Seasonable Directions

ELECTION

of

To which is added

The Bill for regulating the
ELECTIONS OF MEMBERS TO
serve in PARLIAMENTS

As it was Read and Considered by the HOUSE
OF COMMONS, in the Year 1701.

Recommended to all Thinking, and Wise Men.

By a true Translation, and English Verse.

LONDON, Printed and Sold by W. B. 1701.

THE NECESSITY OF PARLIAMENTS, &c.

That our approaching Parliament may be more successful for our Relief, before it be too late; by being permitted to sit to redress our Grievances, and to perfect those good Designs, now in view, on the Coming in of the Illustrious Prince of Orange, to settle, and save us, these following Common-Law-Maxims, respecting King and Parliament, and the Common and Statute-Laws themselves (to prevent unnatural Disappointments, and Mischiefs) providing for the Sitting of Parliaments, till Grievances be redress'd, and publick Safety secured and provided for, are tender'd to Consideration.

Some known Maxims, taken out of the Law-Books.

I. Respecting the King.

That the Kings of England can do nothing, as Kings, but what of Right they ought to do.

That the King can do no Wrong, nor can he die.

A 2

That

That the King's Prerogative, and the Subjects Liberty are determined by Law.

That the King hath no Power, but what the Law gives him.

That the King is so called, from ruling well; Rex à bene regendo, [viz. according to Law;] Because he is a King whilst he rules well, but a Tyrant when he oppresseth.

That Kings of England never appear more in their Glory, Splendour, and Majestick Sovereignty, than in Parliaments.

That the Prerogative of the King cannot do Wrong, nor be a Warrant to do Wrong to any. Plowd. Comment. fol. 246.

2. Respecting the Parliament.

That Parliaments constitute, and are laid in the Essence of the Government.

That a Parliament is that to the Commonwealth, which the Soul is to the Body; which is only able to apprehend and understand the Symptoms of all Diseases which threaten the Body Politick.

That a Parliament is the Bulwark of our Liberty; the Boundary which keeps us from the Inundation of Tyranical Power, Arbitrary, and Unbounded Will-Government.

That Parliaments do make new, and abrogate old Laws, reform Grievances in the Commonwealth, settle the Succession, grant Subsidies; and, in summ, may be called the great Physician of the Kingdom.

From whence it appears, and is self-evident, if Parliaments are so absolutely necessary in this our Constitution, that they must then have their certain stationary times of Session and Continuance, for providing Laws essentially necessary for the Being, as well as the Well-Being of the People; and redressing all publick Grievances, either by the want of Laws, or of the undue Execution of them in being, or otherwise. And suitable hereunto are those Provisions made by the Wisdom of our Ancestors, as recorded by them, both in the Common, and Statute-Law.

First,

First, *What we find hereof in the Common Law.*

The Common Law (saith my Lord Coke) is that which is found- Coke, lib. 7
ded in the immutable Law, and Light of Nature, agreeable to Rep. p. 12,
the Law of God; requiring Order, Government, Subjection and 13.
Protection, &c. containing ancient Usages, warranted by holy
Scripture: And because it is generally given to all, it is there-
fore called Common.

And he further saith, *That in the Book called The Mirror* Lib. 9.
of Justice, appeareth the whole Frame of the ancient Common Preface.
Laws of this Realm, from the time of King Arthur, 516. till
near the Conquest; which, treats also of the Officers, as well as
the Diversity and Distinction of the Courts of Justice (which
are Officinæ Legis;) and particularly, of the High Court of
Parliament, by the Name of Council-General, or Parliament;
so called, from Parler-la-ment, speaking judicially his Mind:
And, amongst others, gives us the following Law of King Al-
fred, who reigned about 880.

“ Le Roy Alfred ordeigna pur Usage perpetuel que a deux Mirror of
foits per l’An ou plus sovene pur mistier in temps de Peace, se Justice, ch.
“ assembler a Londres, pur Parliamenter surle Guidement del 1. Sect. 3.
“ People de Dieu, coment gents soy garderent de Pechers, vi-
“ verent in quiet, receiverent droit per certain Usages, &
“ saints Judgments.

“ King Alfred ordaineth for an Usage perpetual, that
“ twice a Year, or oftner if need be, in time of Peace, they
“ shall assemble themselves at London, to treat in Parliament,
“ of the Government of the People of God, how they
“ should keep themselves from Offences, should live in quiet,
“ and should receive Right by certain Laws, and holy Judg-
“ ments.

“ And thus (saith my Lord Coke) you have a Statute of Lord
“ King Alfred, as well concerning the holding of this Court Coke’s
Comment
“ Of upon it.

"of Parliament twice every Year at the City of *London*, as
 "to manifest the three-fold End of this great and honourable
 "Assembly of Estates. As,

"*First*, That the Subject might be kept from offending;
 "that is, that Offences might be prevented, both by good
 "and provident Laws, and by the due Execution thereof.

"*Secondly*, That Men might live safely, and in quiet.

"*Thirdly*, That all Men might receive Justice by certain

"Laws, and holy Judgments; that is, to the end that Ju-

"stice might be the better administred, that Questions and

"Defects in Laws might be by the High Court of Parlia-

"ment plained, reduced to Certainty, and adjudged.

"And he further tells us, That this Court being the most

"supream Court of this Realm, it is a part of the Frame of

"of the Common Laws; and, in some Cases, doth proceed

"legally, according to the ordinary Course of the Common

"Law; as it appeareth, 39 E. 3. i. *Coke Inst. ch. 29. fol. 5.*

To be short, Of this Court it is truly said, *Si Verestatem
 spectes, est antiquissima; si Dignitatem, est honoratissima; si
 Jurisdictionem, est capacissima.* If you regard Antiquity, it
 is the most ancient; if Dignity, the most honourable; if Ju-
 risdiction, the most sovereign.

And where Question hath been made, whether this Court
 continued during the Heptarchy, let the Records themselves
 make answer; of which he gives divers Instances in the times
 of King *Ine*, *Offa* and *Ethelbert*. After the Heptarchy, King
Edward, Son of *Alfred*, King *Ethelston*, *Edgar*, *Ethelred*,
Edmond and *Canutus*. All which (he saith) and many
 more, are extant, and publickly known; proving by divers
 Arguments, that there were Parliaments, unto which the
 Knights and Burgesses were summoned, both before, in, and
 after the Reign of the Conqueror, till *Henry the Third's*
 Time. And for your further Satisfaction herein, see 4 E. 3.
 25. 49 E. 3. 22, 23. 11 H. 4. 2. *Littl. lib. 2. c. 10.*

Whereby

Whereby we may understand,

1. That Parliaments are part of the Frame of the Common Law, [which is laid in the Law and Light of Nature, Right Reason, and Scripture]

2. That, according to this Law of Equity and Righteousness, Parliaments ought frequently to meet, for the common Peace, Safety and Benefit of the People, and Support of the Government.

3. That Parliaments have been all along esteemed an essential part of the Government, as being the most ancient, honourable and sovereign Court in the Nation; who are frequently to sit, for the making and abolishing Laws, redressing of Grievances, and seeing to the due Administration of Justice.

4. That, as to the Place of Meeting, it was to be at *London*, the Capital City, the Eye and Heart of the Nation; as being not only the Regal Seat, but the principal place of Judicature, and Residence of the chief Officers, and Courts of Justice, where also the Records are kept, as well as the principal place of Commerce and Concourse in the Nation; and to which the People may have the best Recourse, and where they may find the best Accommodation.

5. The Antiquity of Parliaments in this Nation, which have been so ancient, that no Record can give any Account of their Beginning, my Lord *Coke* thus tracing them from the *Britains*, through the *Saxons*, *Danes* and *Normans*, to our Days.

So that, Not to suffer Parliaments to sit, to answer the great Ends for which they were instituted, is expressly contrary to the Common Law; and so consequently of the Law of God, as well as the Law of Nature; and thereby Violence is offered to the Government it self, and Infringment of the Peoples fundamental Rights and Liberties.

Secondly, *What we find hereof in the Statute-Law.*

The Statute-Laws are Acts of Parliament; some whereof are declarative of the Common Law, the rest are the positive Rule, which (as you have heard) is founded upon right Reason and Scripture; for we are told, That if any thing is enacted contrary thereto, it is void and null: As *Coke Inst. lib. 2. cap. 29. fol. 15. Finch, pag. 3. 28 H. 8. cap. 27.*

The first of these Statutes, which require the frequent Meeting and Sitting of Parliaments, agreeable to the Common Law, we find to be in the time of *Edward the Third*; viz. 4 E. 3. § cap. 14. in these Words:

“Item, *It is accorded, that a Parliament shall be holden every Tear once, or more often if need be.*

The next is, in the Thirty sixth Year of the same King *Edward the Third*, cap. 10. viz.

“Item, *For the Maintenance of the said Articles and Statutes, and redressing of divers Mischiefs and Grievances which daily happen, a Parliament shall be holden every Tear, as at another time was ordained by a Statute, viz. the aforementioned, in his fourth Year.*

And agreeable hereto are those Statutes upon the Rolls, viz. 5 E. 2. § 1 R. 2. N^o. 95.

By which Statutes it appeareth, that Parliaments ought annually to meet, to support the Government, and to redress the Grievances which may happen in the Interval of Parliaments; that being the great End proposed in their said Meetings.

Now, For Parliaments to meet annually, and not suffered to sit to answer the Ends, but to be prorogued or dissolved before they have finished their Work, would be nothing but a deluding the Law, and a striking at the Foundation of the Government it self, and rendering Parliaments altogether useless: For it would be all one to have no Parliaments at all, as to have them turn'd off by the Prince, before they have

have done that they were called and intrusted to do : For, by the same Rule whereby they may be so turn'd off one Session, they may be three Sessions, and so to threescore, to the breaking of the Government, and introducing Arbitrary Power. To prevent such intollerable Mischiefs and Inconveniences, are such good Laws as these made in this King's time, and which were so sacredly observed in after times, that it was a Custom, especially in the Reigns of *Henry the Fourth*, *Henry the Fifth*, and *Henry the Sixth*, to have a Proclamation made in *Westminster-Hall*, before the End of every Session, * "*That all those who had any Matter to pre-*

An honest and necessary Proclamation to be made every Parliament.

sent to the Parliament, should bring it in before such a Day; for otherwise, the Parliament at that Day should determine. Whereby it appears, the People were not to be eluded nor disappointed by surprizing Prorogations and Dissolutions, to frustrate, and make void the great Ends of Parliaments.

And to this purpose saith a late learned Author, "*That if there was no Statute, or any thing upon Record, extant, concerning the Parliaments fitting to redress Grievances, yet that I must believe that it is so by the fundamental Law of the Government, which must be lame and imperfect without it : [For otherwise, the Prince and his Ministers may do what they please, and their Wills may be their Laws.]*

"*Therefore it is provided for in the very Essence and Constitution of the Government it self; and this (saith our Author) we may call the Common Law, which is of as much value (if not more) than any Statute; and of which, all our good Acts of Parliament, and Magna Charta it self, is but declaratory. So that though the King is intrusted with the formal part of summoning and pronouncing the Dissolution of Parliaments, which is done by Writ, yet the Laws which oblige him (as well as us) have determined how, and when he shall do it; which is enough to shew, that the King's Share in the Sovereignty, that is, in the Parliament, is cut out to him by Law, and not left to his disposal.*

25 Ed. 3.
cap. 23.
Statute of
Provisors.

The next Statute we shall mention, to inforce this fundamental Right and Privilege, is the 25th of Ed. 3. chap. 23. called *The Statute of Provisors*; which was made to prevent and cut off the Incroachments of the Bishops of Rome, whose Usurpations in disposing of Benefices occasioned intollerable Grievances; wherein, in the Preamble of the said Statute, it is expressed as followeth.

"Whereupon the Commons have prayed our said Sovereign Lord the King, that sith the Right of the Crown of England, and the Law of the said Realm is such, that upon the Mischiefs and Damage which happeneth to his Realm, he ought, and is bounden, of the Accord of his said People, in his Parliament, thereof to make Remedy and Law, in avoiding the Mischiefs and Damage which thereof cometh; that it may please him thereupon to provide Remedy. Our Sovereign Lord the King seeing the Mischiefs and Damage before-named, and having regard to the said Statute, made in the time of his said Grandfather, and to the Causes contained in the same; which Statute holdeth always its force, and was never defeated or annulled in any Point; and by so much is bound by his Oath to do the same, to be kept as the Law of this Realm, though that by Sufferance and Negligence it hath since been attempted to the contrary: And also having regard to the grievous Complaints made to him by his People, in divers Parliaments holden heretofore, willing to ordain Remedy for the great Damages and Mischiefs which have happened, and daily do happen by the said Cause, &c. By the Assent of all the great Men, and Commonalty of his said Realm, hath ordained and established, &c.

In which Preamble of the Statute we may observe,

1. The intollerable Grievance and Burthen, which was occasioned by the illegal Incroachments of the See of Rome.
2. The many Complaints the People had made, who, in those dark Times, under Popery, were sensible of, groaning under those Burthens.

3. The

3. The Endeavours used in vain by former Parliaments, to redress the same, and to bring their Laws in being, to have their force and effect.

4. The Acknowledgment of the King and Parliament, that the Obligation hereto was upon the King,

1. From the Right of the Crown, which obliged every King to pass good Laws.

2. The Statute in force.

3. The King's Oath to keep the old, and pass new Laws, for his People's safe-guard, which they should tender to him.

4. From the Sense of the People, expressed in their Complaints. And

5. From the Mischief and Damage which would otherwise ensue.

And therefore, by the Desire and Accord of his People, he passeth this famous Law, the Preamble whereof is here recited.

Another Statute to the same purpose you find in 2 Ric. 2. N^o. 28.

*" Also the Commons in Parliament pray, that forasmuch as
 " Petitions and Bills, presented in Parliament by divers of
 " the Commons, could not heretofore have their respective An-
 " swers; That therefore both their Petitions and Bills in this
 " present Parliament, as also others which shall be presented in
 " any future Parliament, may have a good and gracious An-
 " swer and Remedy ordained thereupon before the departing
 " of every Parliament: And that to this purpose, a due Sta-
 " tute be ensealed [or enacted] at this present Parliament,
 " to be and remain in force for all Times to come.*

The King's Answer.

THE King is pleas'd, that all such Petitions delivered in Parliament, of Things (or Matters) which cannot otherwise be determined, a good and reasonable Answer shall be made, and given, before the Departure of Parliament.

In which excellent Law we may observe,

1. A Complaint of former Remisness; their Bills having aforetime been pass'd by, their Grievances unredressed, by unseasonable dissolving of Parliaments before their Laws could pass.

2. That a Law might pass in that very Parliament, to rectifie that Abuse for the future. And

3. That it should not pass for a temporary Law, but for Perpetuity; being of such absolute Necessity, that before the Parliaments be dismissed, Bills of common Right might pass.

And the King agreed hereto.

Suitable hereto we have my Lord Chief Justice *Coke*, that great Oracle of the Law, in his *Inst. 4. B. p. 11.* asserting, "*Petitions being truly preferr'd (though very many) have been answered by the Law, and Custom of Parliament, before the End of Parliament.*"

"This appears (saith he) by the ancient Treatise, *De Modo tenendi Parliamentum*, in these Words, faithfully translated; *The Parliament ought not to be ended, while any Petition dependeth undiscussed; or, at the least, to which a determinate Answer is not made, Rot. Par. 17 E. 3. N^o 60. 25 E. 3. N^o 60. 50 E. 3. N^o 212. 2 R. 2. N^o 134. 2 R. 2. N^o 38. 1 H. 4. N^o 132. 2 H. 4. N^o 325. 113.*

And

" And that one of the principal Ends of calling Parliaments is, for redressing of Grievances that daily happen, 36 E. 3. cap. 10. 18 E. 3. cap. 14. 50 E. 3. N^o. 17. Lyon's Case, Rot. Par. 1 H. 5. N^o. 17. 13 H. 4. N^o. 9.

And that, as concerning the departing of Parliaments, It ought to be in such a manner (saith *Modus tenendi*,) viz. To be demanded, yea, and publickly proclaimed in the Parliament, and within the Palace of the Parliament, whether there be any that hath delivered a Petition to the Parliament, and hath not received Answer thereto: If there be none such, it is to be supposed that every one is satisfied, or else answered unto at the least, so far forth, as by the Law he may be. And which Custom was observed in After-Ages, as you have heard before.

Concerning the Antiquity and Authority of this ancient Treatise, called *Modus tenendi Parliamentum* (saith my Lord Coke) whereof we make often use in our *Institutes*, certain it is, that this *Modus* was rehearsed and declared before the Conqueror, at the time of his Conquest, and by him approved for England: And accordingly, be, according to *Modus*, held a Parliament for England; as appears by 21 E. 3. fol. 60.

Whereby you clearly perceive, that these wholesome Laws are not only in full Agreement with the Common Law, and declarative thereof; but in full accord with the Oath and Office of the Prince, who hath that great Trust by the Law lodged with him for the Good and Benefit, not Hurt and Mischief of the People, viz.

First, These Laws are very suitable to the Office and Duty of a Ruler, and the End for which he was instituted by God himself, who commands him to do Judgment and Justice to all, especially to the Oppressed; and not to deny them any Request for their Relief, Protection, or Welfare, 2 Sam. 22. 3. 1 Chron. 13. 1, to 5. 2 Chron. 9. 18, 19, 5, &c. Est. 1. 13. our Law-books injoining the same; as *Bracton*, lib.

lib. 1. cap. 2. Lib. 3. cap. 9. fol. 107. &c. Fortescue, cap. 9. fol. 15. cap. 7. fol. 5. 11. Coke 7. Book of Reports. Calvin's Case, fol. 11.

Secondly, They are also in full Harmony with the King's Coronation-Oath, solemnly made to all his Subjects, *viz. To grant, fulfil and defend all rightful Laws which the Commons of the Realm shall chuse, and to strengthen and maintain them after his Power.*

Thirdly, These Laws are also in full Agreement and Oneness with *Magna Charta* it self, that ancient fundamental Law, which hath been confirmed by at least forty Parliaments, *viz. We shall deny, we shall defer to no Man Justice and Right*; much less to the whole Parliament and Kingdom, in denying, or deferring to pass such necessary Bills which the Peoples Needs call for.

Object. But to all this which hath been said, it may be objected, That several of our Princes have otherwise practised, by dissolving or (as laterly used, by) proroguing Parliaments at their pleasures, before Grievances were redressed, and publick Bills of common Safety passed; and that as a Privilege belonging to the Royal Prerogative.

Answ. *To which it is answered, That granting they have so done; First, it is most manifest, that doth not therefore create a Right to them so to do, according to that known Maxim, A facto ad jus non valet Consequentia; especially, when such Actions are against so many express and positive Laws, such Principles of Common Right and Justice, and so many particular Ties and Obligations upon themselves to the contrary.*

Secondly, But if it had been so, yet neither can Prerogative be pleaded, to justifie such Practices, because the King hath no Prerogative, but what the Law gives him; and it can give none to destroy it self, and those it protects; but
the

the contrary. *Bracton*, in his *Comments*, pag. 487. tells us, *That although the Common Law doth allow many Prerogatives to the King, yet it doth not allow any, that he shall wrong or hurt any by his Prerogative.* *Bracton*, p. 487.

Therefore it is well said by a late worthy Author upon this Point, *That what Power or Prerogative the Kings have in them, ought to be used according to the true and genuine Intent of the Government; that is, for the Preservation and Interest of the People: And not for the disappointing the Counsels of a Parliament, towards reforming Greivances, and making provision for the future Execution of the Laws. And whenever it is applied to frustrate those Ends, it is a Violation of Right, and an Infringment of the King's Coronation-Oath, who is obliged to pass or confirm those Laws his People shall chuse. And though he had such a Prerogative by Law, yet it should not be so used, especially in time of imminent Danger and Distress.*

King *Charles the First*, in his Advice to His Late Majesty, in his *Εἰκὼν Βασιλική*, p. 239. tells him, *That his Prerogative is best shewed; and exercised, in remitting, rather than exacting the Rigour of the Laws; there being nothing worse than legal Tyranny.* *K. Ch. I. his Advice to His late Majesty.*

Nor would he have him entertain any Aversion, or Dislike of Parliaments; which in their right Constitution, with Freedom and Honour; will never injure or diminish his Greatness; but will rather be as Interchangings of Love, Loyalty and Confidence between a Prince and his People.

It is true, some Flatterers and Traytors have presumed. in defiance to their Countries Rights, to assert, that such a boundless Prerogative belongs to Kings: As did Chief Justice *Trifilian*, &c. in *Richard the Second's* time; advising him, *That he might dissolve Parliaments at pleasure; and, That no Member should be called to Parliament, nor any Act passed in either House, without his Approbation in the first place; and, That whoever advised otherwise were Traytors.* But this Advice,

you read, 'was no less fatal to himself, than pernicious to his Prince, *Baker's Chron.* p. 147, 148, and 159.

King James the First, in his Speech to the Parliament, Anno 1609. gives them Assurance, *That he never meant to govern by any Law, but the Law of the Land; though it be disputed among them, as if he had an Intention to alter the Law, and govern by the Absolute Power of a King.* But to put them out of doubt in that matter, he tells them, *That all Kings, who are not Tyrants, or perjured, will bound themselves within the Limits of their Laws: And they that perswade the contrary, are Vipers and Pests, both against them, and the Commonwealth,* Wilson. *K. J.* p. 46.

The Conclusion.

I. **I**F this be so, that by so great Authority (*viz.* so many Statutes in force, the Fundamentals of the Common Law, the Essentials of the Government it self, *Magna Charta*, the King's Coronation-Oath, so many Laws of God and Man;) the Parliament ought to sit, to redress Grievances, and provide for common Safety, especially in Times of common Danger. (And that this is eminently so, who can doubt, that will believe his own Sense, and the Experience of the manifold Mischiefs which have been acted, and the apparent Ruin and Confusion that impends the Nation, by the restless Attempts of a bloody Interest, if speedy Remedy is not applied?) Then let it be query'd, whether, the People having had thus the Knife at the Throat, Cities and Habitations fired, and therein their Persons fried, Invasions and Insurrections threatned to destroy our Government and fundamental Laws and Properties; nay, our Religion it self; they are not therefore justified in their important Cries, in their many humble Petitions to their King, fervent Addresses,

dress, earnest Claims for this their Birth-right here pleaded, which the Laws of the Kingdom, consonant to the Laws of God and Nature, has given them ?

2. If so, What then shall be said to those who have advised to this high Violation of their Countries Rights, to the infringing so many just Laws, and exposing the Publick to those desperate Hazards, if not a total Ruin and Subversion of these Nations ?

If King *Alfred* (as *Andrew Horne*, in his *Mirror of Justice*, tells us) hanged *Darling*, *Segnor*, *Cadwine*, *Cole*, and forty Judges more, for judging contrary to Law ; and yet all those false Judgments were but in particular and private Cases ; What Death do those Men deserve, who offer this Violence to the Law it self, and all the sacred Rights of their Country ?

If the Lord Chief Justice *Thorpe*, in *Edward the Third's* time, for receiving the Bribery of one hundred Pounds, was adjudged to be hanged, as one that had made the King break his Oath to the People ; How much more guilty are they of making the King break his Coronation-Oath, that perswade him to act against all the Laws for holding Parliaments, and passing Laws therein, which he is so solemnly sworn to do ?

And if the Lord Chief Justice *Tresillian* was hanged, drawn and quarter'd, for advising the King to act contrary to some Statutes only ; What do those deserve, that advise the King to act, not only against some, but against all these ancient Laws and Statutes of the Realm ?

And if *Blake*, the King's Council, but for assisting in the Matter, and drawing up Indictments by the King's Command, contrary to Law, though it is likely he might plead the King's Order for it ; yet, if he was hang'd, drawn and quarter'd for that, what Justice is due to them that assist in the total Destruction of all the Laws of the Nation, and, as much as in them lies, their King and Country too ?

And if *Ask*, the Under-Sheriff, (whose Office it is to execute the Laws) for but endeavouring to aid *Tresillian, Blake*, and their Accomplices, against some of the Laws, was also, with five more, hang'd, drawn and quarter'd; what Punishment may they deserve, that aid and endeavour the Subversion of all the Laws of the Kingdom?

And if *Empson* and *Dudley*, in *Henry* the Eighth's time, though two of the King's Privy Council, were hang'd for procuring and executing an Act of Parliament, contrary to the fundamental Laws of the Kingdom, and to the great Vexation of the People; so that, though they had an Act of Parliament on their side, yet that Act being against the known Laws of the Land, were hang'd as Traytors, for putting that Statute in Execution; then what shall become of those who have no such Act to shelter themselves under; and who shall act, not only contrary to, but to the Destruction of the fundamental Laws of the Kingdom?

And how harmonious such Justice will be, the Text tells us, *Deut. 27. 17. Cursed be he that removeth his Neighbour's Land-Mark: And all the People shall say, Amen.*

That this next Parliament may have an happy Entrance and Issue, to answer the great Ends of Parliaments, and therein our present Exigences and Necessities, is the incessant Cry, and long Expectation of all the Protestants in the Land.

The Directions now follow.

After such a Crisis of Time as this, wherein both our Civil Liberties and Religion have been at stake, and and must always certainly stand or fall together, I thought I could not do a greater Service to the Publick, than to offer some Remedies, which might prevent the fatal Consequences of undue Elections, and Returns; especially, since the great Design of the Adversaries of our Religion, upon which they lay their whole Stress, and have used their utmost Efforts, for these two or three Years last past, appears to be, the framing of such a Parliament, as might make way for the Change of our Religion: To compass which, they have used such unheard of Methods, and practised such open Violations upon the Rights and Freedoms of Parliaments, and Elections, as no Age can parallel, without any Colour of Law, or Precedent.

For the Demonstration of which, it shall suffice to give these few Instances.

Not to insist upon the *Quo Warranto's* brought, and Judgments given thereupon, against the Charter of *London*, and other places, at the latter end of the late King's Time; with the Methods taken to procure Surrenders from Cities and Corporations; with the exorbitant Fines, imposed upon the Rioters of *London*, at the Election, and the framing of Courts, Juries and Sheriffs to this purpose: Which yet had been done in the Forms, and under the Countenance of Law; and

and therefore are only fit for the Consideration of a Parliament ; together with that Proviso introduced into all the New Charters, wholly inconsistent with the nature of a Corporation, wherein every Man hath a Free-hold, and the Corporation it self a Perpetuity of an Inheritance ; and which manifestly subverts all the Right and Freedom of Elections, not only of the Members of the Corporation, but of their Representatives in Parliament, and have not yet the Countenance of one Precedent or Judgment of any Court ; and therefore it is hoped, will be declared illegal, and void, by the next succeeding Parliament.

All which Matters have been strangely improved and extended by the Ministers, in the Reign of His Present Majesty, as might be easily demonstrated ; but I shall only fix upon such as have been lately practised, which come within the former Rule, *Of being without the Colour of Law, or Precedent.*

First, First, and before all, That Method of Testing all the Officers in the Kingdom, from the highest, to the lowest, with these three Questions ; and turning out all such as refused to comply.

1. *Whether, if they were chosen to be Members of Parliament, they would give their Voice to repeal the Penal Laws and Test ?* Directly opposite to the Right and Freedom of Parliaments, and the Duty of the Members thereof.

2. *Whether they would give their Voices to elect such as would repeal the Penal Laws and Test ?* In Subversion of the Right of Election, and Freedom of Members.

3. *Whether they would stand by the King's Declaration ?* Wherein the King assumes to himself, to suspend all these Laws, without Limitation of Time or Persons.

Secondly,

Secondly, The under-hand imposing upon the Clergy, to address for, and then publickly, by Order, to read the Declaration; and the Proceeding against the Bishops, for not concurring therein; and against the Body of the Clergy, that refused to comply therewith.

Thirdly, The Testing the Corporations, by Addresses, or otherwise, to promise to elect such Members as should be for Taking off the Penal Laws and Test, when the King should please to call a Parliament; and the Turning out all such, from time to time, as refused.

Fourthly, The Imposing Charters upon several Burroughs in *Cornwal* and *Devon*, and elsewhere, before the Election of the last Parliament, without Petition; and taking away the Right of Election from the Generality, and restraining it to a few; which hath also been endeavoured upon other Burroughs since.

Fifthly, Procuring an Order to be enter'd in most of the Cinque-Ports, that the King should have the Nomination of one Member.

Sixthly, Appointing a Committee, or Commission, consisting, for the most part, of *Roman Catholicks*, both Lords and others, publickly to meet twice or three times a Week, to consult about the Method of framing a Parliament to these Ends, and give out Orders for the same; and especially, for the regulating of Corporations, as it is called; and employing Commissioners into all Counties, under them.

Seventhly, The nominating many Lords Lieutenants, Sheriffs, Mayors and Bayliffs, profess'd *Roman Catholicks*; and the Generality of the rest, such as, by reason of their Dependence upon the Court, Indigence of their Fortunes, or Obnoxiousness

noxiousness to the Laws, have, contrary to their Duties, given an Assurance to promote such Elections.

I have mentioned these, only to shew the great Necessity incumbent upon every good *English Man*, and *Protestant*, however differing in Opinion as to some Religious Matters, to use their utmost Endeavours, upon the approaching Election, to oppose and prevent all further illegal Practices, either in the Election, or Return: And the better to enable them, I shall propose this following Method, as I conceive, undoubtedly warranted by Law.

I. That since, by the Statute of *Westminster*, 1 *Car.* 5. it is declared, that all Elections ought to be free; and the King forbids, under grievous Forfeitures, that no Great Men, nor other, by power of Arms, or by Malice, or Threatnings, should disturb to make free Elections: And by the Statute of 7 *H.* 4. 15. it is declared, that Elections ought to be freely, and indifferently made, without Request, or Commandment, no Peer hath to do in the Election of the Commons, being no Suitor, or summonable to the County-Court, nor contributory to the Ways for his Land; that therefore no City, Burrough, or Corporation, or the Members thereof, or Electors for the County, do admit of any Recommendation, Request, or Commandment from the King, or any Peer in Office, (who ought not, by the Law, to intermeddle in any of these Elections,) or make any Promise to any of them, for the Choice of any Man, before such Election; nor admit of the Presence of any Lord-Lieutenant, or of any Military Officer, or Soldier, not having Right to give a Voice to the said Election; but to insist upon it, that they withdraw.

II. That, after the Writ or Precept read, they cause to be read the Statutes of 7 *H.* 4. 15. and 23 *H.* 6. 15. wherein the Manner is prescribed for the Elections, both in Counties, Cities and Burroughs; and that they both pursue, and require

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of the Sheriff, and chief Officers, the Observation thereof, and not to permit or suffer any Deviation from the same.

III. That they do principally observe two things in the said Statutes: First, That as well the Return as the Election of the Knights, is to be made at the next County-Court after the receipt of the Writ, and the Sheriff not to Depart, or Dissolve the Court till such time as the Return be made. Secondly, That both the Election and Return is to be made by Indenture, which is to be Sealed by every one of the Electors, and the Duplicate by the Sheriff, and the such Indenture shall be annexed to the Writ; and the such Indenture is the Return of the Sheriff: So that the Return is in the Power of the Electors, and not of the Sheriff; the omission of which Sealing the Indenture, at the time of giving in their Votes, by every Elector, which is the standing Poll of the Election, by *Law*, and no other Poll required, hath given the opportunity to the Sheriff of practising all the Partiality imaginable at Polls, and by Adjourning of the Court to remote Places and Inns, after the Election, which he cannot do without the Consent of the Freeholders, by *Law*, unless in case of necessity, for want of Provisions, or Sickness broke out in the place since the last Court, or the like, as also of the false and double Returns made by them. The Method therefore to be taken is this, not wholly refusing the Poll, because it hath been long practised, and gives the Sheriff opportunity of examining as to 40 s. *per annum*, to prepare an Indenture, one part whereof to have several Skins of Parchment, to which (in case of Contest) either before or after the giving their Votes, every Elector should set his Name or Mark and Seal, such Sealing to be in the presence of some intrusted therewith, who may testify the same; and such Seals to be dropt with hard Wax upon the Parchment, in rows, with room to write the Names; which, at the end of the Election, with a Duplicate is to be presented to the Sheriff, and he required to annex the

See also the
Clause in
the Writ,
added by
the Statute
of 23 H.6.
15.

come to his Writ; and if he refuse so to do the same, they may justifie the detaining him there till he comply; nor can he Adjourn or dissolve the Court till he hath performed the same, and sealed a Duplicate thereof, there being no occasion for such an Adjournment; nor is he Judge of any Exception, but only hath Power to Examine upon Oath, as to the 40 s. *per annum*.

IV. As to Cities, Burroughs, and Towns Corporate, the like Method is to be observed in their Elections and Returns; and though it be not particularly expressed in the said Statutes, as to the manner of their Election and Return, as in the Case of the Knights of the Shire, yet the constant Practice of making Return by Indenture, either under the common Seal of the Corporation, or Hands and Seals of the Electors, where no common Seal is, and annexing it to the Precept, and proceeding in the same manner by Votes and Poll, in case of a Contest, shews that this was the common Law and Custom of *England*, before the making of the said Statutes, and only re-inforced under Penalties by such Statutes; and therefore the putting the Seal to this, and Annexing it to the Precept, and Indorsing by the Mayor, or other chief Officer, upon the back of the Precept, that the Return of this Precept, is in an Indenture thereto annexed, is the Duty of the Mayor, and what he may be compelled to do after the Election, before he Adjourn or Dissolve the Court; and by a Clause in the Statute 23 H. 6. 15. it is declared, The Citizens and Burgeses as have always been Chosen by Citizens and Burgeses, and no other, and returned to the Sheriff, and upon their Returns accepted and received by *Parliament*.

V. In case the Sheriff shall refuse to annex such Return and Precept to the Writ, for which end the Corporation ought to send some of their Number with the Mayor or chief Officer;

Officer; they may do well to detain the Return, and not deliver it till the Parliament sits; and in case of any doubt of the Practice of the Sheriff and Mayor, after the Return made in manner aforesaid, they may keep the Return, and carry it in to the Sheriff, such Indenture so annexed, being as well the Return of the Mayor, as in the County of the Sheriff.

VI. Whereas many Foreigners have been made Members of Corporations, which do not Live, nor Inhabit in the said Corporations, 'tis humbly conceived, that no Votes in Election can belong to them; for that it appears not only by the Statute 1 H. 5. 1. and other Statutes that require the Electors to be Citizens and Burgesses of the said Cities and Burroughs, that are resident on the Place, which though it be Dispensed with as to the Persons Elected, being only a prohibitory Clause, and not disabling the Person to be Elected, or making the Election void, and that those Acts were made upon Petition of the Gentlemen, not to be compelled to serve for Corporations, and so was granted to them as a Privilege, if they would take advantage of it, but *Volenti non fit injuria*, yet was it never Dispensed with, as to the Electors in Counties, nor ought it to be so in Corporations or Burroughs; and that this is the Common Law of the Realm, appears by the Clause in the Statute 23 H. 6. 15. which after the recital of the Statute 1 Hen. 5. 1. declares, That the Citizens and Burgesses have always been Chosen by Citizens and Burgesses, and no other; and also, that even those that have been real Citizens or Freemen, or Inhabitants of Corporations, as having been Apprentices there, yet when they live out of the said Towns, cannot enjoy the Privileges that are granted to the said Corporations, as in the famous Judgment in Prize, as to the Citizens of London: which shews that the Privileges are Local and not Personal; and though they have been sometimes admitted to give Votes, yet it is conceived, this is against Law, and cannot be defended.

VII. Where Sheriffs, Mayors, and other chief Officers have not taken the Test, and will not comply with the Law, to make due Elections and Returns, it is conceived, that they may be justly excepted against, and the Elections and Returns made without them; and that where any Burrough hath a Corporation lately put upon them, neither the Election nor Return is altered thereby, but shall belong to the Inhabitants and Bailiff of the Burrough as formerly, and not to the Mayor or Bailiff by Charter.

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THE
BILL
For Regulating Abuses in
ELECTIONS
OF
MEMBERS
To Serve in
PARLIAMENT,

As it was read a Second Time, and Committed, by
the HOUSE of COMMONS, upon *Saturday*
the 5th of *April*, 1679.

And now offered as Advice to the Consideration of the
whole Kingdom.

FOR the remedying the many and great disorders, mis-
carriages, inconveniences, disputes, and contests, ari-
sing about the Elections and Returns of Knights, Citi-
zens, and Burgeses to sit in Parliament, Be it Enacted by the
Kings most Excellent Majesty, Lords Spiritual and Tempo-
ral

ral, and Commons assembled, That for the time to come every person that at the time of any Election of Knights of any Shire or County at large, is, and by the space of one year next before such Election, hath been a Householder and Inhabitant in the same County, and within the same by all that time hath been (without fraud or design thereby to enable himself to give Voice) charged, rated, taxed to, and have payed and born his Scot and Lot towards the maintenance and defraying the Poor, and other publick Charges and Payments, and who is not under one and twenty years of age; and is worth two hundred pounds in Fee, clear Estate of his own, over and besides his Debts, Charges, and Engagements by him owing and payable, or engaged in; and none other shall have Vote, Voice, and be Elector of Knights of the County or Shire wherein he so inhabits or dwells. That in every Inn-Shire City or Town that is both City and County, and in every other City, Town, Burrough, or place, that now do, or hereafter shall send Members to the Parliament (except the Cities of *London, York, Norwich, Exeter, and Bristol*) every person at the time of such Election of Members for to sit in Parliament for any such place, that at the time of such respective Election, and by the like space of one year before, hath been a Householder and Inhabitant, within such respective City, Town, Burrough, or place (except before excepted) and by all that time hath been there charged, rated, taxed, and paid Scot and Lot; without fraud; as aforesaid; and not under one and twenty years of Age: And none others shall have Vote and Voice, and be Elector in such respective City, Burrough, Town, or place, any Law, Charter, or *non obstante* in any Charter to the contrary notwithstanding. And that the respective Sheriffs, and other Officers, to whose care and management the Elections are committed, have hereby power and authority to administer unto, and to examine upon oath, the parties themselves concerning the Qualifi-

Qualifications and Matters aforesaid, That for the future no person by himself, or others, by or with his consent and approbation, shall by feasting, treating, entertaining with meat, drink, or otherwise; or by bribes, presents, rewards, or gifts, given, spent, promised, or engaged to, upon or amongst the Electors, or to or for their use or benefit, or to or for the only benefit or advantage of any County, City, Town, or place, sending members to Parliament, or the Inhabitants thereof, or under any pretended Charity for the Poor of any such Town or place, directly, or indirectly, labour or endeavour to obtain or procure Elections of any person, or persons, to be Members or Representatives to sit in Parliament, under the pains and penalties ensuing (to wit) that every such person so labouring, or endeavouring by any such undue and illegal ways and means, shall be hereby disabled and incapable of being or sitting as a Member of that Parliament, and also shall forfeit the sum of five hundred pounds: And that the City, Town, or place, where any such feasting, treating, or entertaining shall be manifestly and notoriously admitted or suffered, shall from that time forfeit their Privilege of sending Members to Parliament: And in lieu thereof, an Election to be made of Members in their stead in some other Town, or place, within the same County, or else in the County at large, as the House of Commons in the next ensuing Parliament, that shall have or take notice of such forfeiture, shall appoint and direct: And it is hereby further Enacted, that all and every Justice of the Peace, Mayor, Bayliffs and Constables, having Jurisdiction or Authority in any such Town, or place, for the suppressing and preventing the misdemeanours and evil practises aforesaid, are hereby commanded and required not to permit any such feasting, treatings, or entertainments, for or in order to the end aforesaid, but upon Oath and Examination (which they are hereby impowered to administer) or upon their own view, to arrest and apprehend all such misdoers, and them to Commit to Goal, there to remain, till they give good and sufficient security

security not to offend in that kind for the future, and appear at the next Assizes, or general Sessions of the Peace for the County, or place, where the offence shall be committed, there to be proceeded against, and punished for his said offence according to Law : And that if any of the Officers or Ministers aforesaid, having information upon Oath, or other sufficient evidence of the fact, shall refuse or neglect to do his duty herein, he shall forfeit the sum of one hundred pounds for every such neglect or refusal : And that if any Mayor, Recorder, Alderman, Town-Clark, Burgess, Port-reeve, Bayliff, Magistrate, or Officer, shall permit or suffer himself to be feasted, treated, or entertained, or shall directly or indirectly accept, take, or receive, any bribe, gift, present, or reward, to the intent and end aforesaid, he is hereby disabled to give any Vote, or to be Elector ; and moreover shall for every such offence forfeit the sum of one hundred pounds. And it is hereby likewise Enacted, that no Writ or Suit shall be hereafter sued, prosecuted, or proceeded for wages, or any sum or sums of money due or demandable for wages, by any Knights, Citizens, or Burgesses, for or in respect of their services in Parliament ; but all such wages are, and from henceforth stand released and discharged, and for the avoiding of the abuses and undue means too often used by Sheriffs, Undersheriffs, Mayors, Bayliffs, and Officers, about such Election and Returns, and that there may be just, fair, and legal Elections and Returns hereafter made ; Be it further Enacted by the Authority aforesaid, That no Sheriff, Port-reeve, Bayliff, Magistrate, or Officer, (except onely when need requires, from the evening to the morning of the next day succeeding, till Election be determined, or to some convenient place within two miles of the Town, or place, appointed, or set, for such Election) shall adjourn the said Election from that day or place appointed or set for the same, but shall fairly and indifferently proceed to finish the Election as soon as conveniently he can at the time and place appointed,

ed, without any other adjournment there, as aforesaid : And if any Adjournment *de facto* be made contrary to this Act, the proceeding afterward shall be void, and the person that had the majority of Voices at the time of such unlawful Adjournment, shall be the person duely Elected, and shall be returned so to be : And if any person shall hereafter be, for consideration of money, bribes, presents, gifts, or rewards, directly or indirectly, given or promised, or ingaged to be given, or for fear or favour, by any Sheriff, Mayor, Bayliff, Port-reeve, or Officer, wrongfully and unduly Returned to be the persons Elected, which in truth and reality was not ; Or if any Sheriff, Undersheriff, their Clerks, or Ministers, or any Mayor, Recorder, Town-Clerk, Port-reeve, Bayliffs, or other Officer, or Magistrate intrusted with the ordering or making such Election, or Returns, shall not fairly, justly, honestly, and impartially, according to the best of his skill and diligence, act and do his duty in the premises ; in every such case the party offending shall forfeit, if a Sheriff, the sum of five hundred pound ; if a Mayor, or other Officer, or Minister, two hundred pound, and treble damages to the party grieved ; and that all securities, promises, and engagements made or given to any Officer, for the indemnifying or saving harmless concerning the premises, shall be absolutely, void, and of no effect ; and every party giving or making such securities, promises, or engagements, to forfeit five hundred pound for his offence in so doing : And further, for the avoiding all exactions, extortions, and briberies, under the pretence of gratuities, presents, or recompence, for dispatch, or towards charges, or otherwise, by any Sheriff, Undersheriff, Sheriff's-Clerk, or Minister, or by any Mayor, Port-reeve, Bayliff, or other Officer, or Minister, hereafter to be taken : Be it Enacted, That none of the said Officers, or Ministers, shall directly, or indirectly take, have, or receive, or agree, or contract to have or receive, for any warrant, or present, upon or by Virtue of any Writ for Election for Parliament, or for any return of any Writ, Mandate or Precept, above the

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sum of two shillings six pence, under the pain of forfeiting ten times as much as he shall in such case take over and besides the sum of two shillings six pence, together with costs in every such suit to be recovered: All and every the penalties and forfeitures aforesaid (except the said forfeitures of treble damages) to be recovered by him, or them that shall, and will sue for the same, in any Court of Record, within the space of one year next ensuing such cause of action accrued, in which suit there shall be no allowance of, or admission of any privilege of Parliament, or other privileges, or of any Protection, or Injunction; nor of any Plea of another action, or information for the same offence depending (except Oaths be made in the Court, where such Plea shall be pleaded by both the Defendant and Plaintiff, and real Prosecutor therein, that the same is really and *bona fide*, brought for recovery of the forfeiture herein, without any fraud or design to excuse or defend the offender from the forfeiture by the Statute imposed) which the Court where such Pleas shall be pleaded, are hereby enabled to examine, and according to the truth and reality thereof, to allow the said Plea, or not; And for the better observation of this Act, all Sheriffs of Counties at large, shall in the place where the Election is to be made, immediately before they proceed to take the Votes of the Electors, cause this Statute to be audibly read in the presence of the Electors; And that all Sheriffs of Inn-Shires, or Cities, or Towns that are Counties of themselves, Mayors, Port-reeves, Bayliffs, and other Officers, and Ministers respectively, shall immediately after the receipt of any Writ, or Precept, for such Election, or certain knowledge of a Parliament to be chosen, set up this Act in their respective Halls, or other publick places, to be read and viewed; and also on the next Lords day after such certain notice of such Parliament to be chosen, or after receipt of such Writ, Precept, or Mandate for such Election, and before the time of the Election, cause and procure this Statute to be publicly and audibly read in the Churches of their Counties, Cities, Towns,

Towns, or Burroughs, where such respective Elections are to be, immediately after Divine Service ended, and before the people assembled are departed? And further, for the prevention of the long continuance of any Parliament for the future, and thereby depriving the King and Kingdom of the benefits of successive Parliaments, It is hereby Enacted, That no Parliament shall hereafter have Continuance in any manner, by Prorogation, or Adjournment, or Session, or partly by one and partly by the other, or otherwise howsoever, for above the space of two years from the day of the return of the Writ of Summons next ensuing, but at the end of the said two years shall be *ipso facto* dissolved: And that in every Indenture hereafter to be made or sealed by any Electors, there be a Clause therein inserted, That the person or persons are hereby authorized to serve in Parliament for the space of two years, from the day of the return of such Writ of Summons next ensuing, if the said Parliament shall so long continue, and no longer.

F I N I S.

